Supreme Court of the United States

October Term, 1959

No. 154

MANUEL D. TALLEY,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA.

On Writ of Certiorari to the Appellate Department of the Superior Court, State of California, County of Los Angeles

BRIEF OF THE AMERICAN JEWISH CONGRESS, *AMICUS CURIAE*

SHAD POLIER
WILL MASLOW
LEO PFEFFER
Attorneys for
American Jewish Congress
Amicus Curiae

JOSEPH B. ROBISON
Of Counsel

BAR PRESS, INC., 84 LAFAYETTE STREET, NEW YORK 13, N. Y. — WA 5-3432

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Interest of the *Amicus*

The American Jewish Congress, a national organization founded in 1918, is a voluntary association of American Jews committed by its constitution to the dual and, for us, inseparable purposes of defending and extending democracy and preserving our Jewish heritage and its values. We

are convinced that the surest way to preserve our nation and our democracy is to guard jealously the liberties secured by our Constitution and Bill of Rights and to oppose any infringements upon those liberties not clearly necessitated by overriding interests.

Freedom of speech and freedom of the press are liberties that are basic to the maintenance and development of our democratic way of life. Punishment for the distribution of anonymous leaflets, which thereby inhibits the expression of ideas, is an encroachment on these essential freedoms. Believing that the ordinance involved in this case constitutes an infringement upon American liberties that cannot be justified as clearly necessitated by an overriding interest, we submit this brief *amicus curiae* with the consent of the parties.

Statement of the Case

This case arises from the judgment of the Appellate Department of the Superior Court of California, county of Los Angeles, sustaining the constitutionality of a city ordinance prohibiting the anonymous distribution of hand-bills.

On March 22, 1958, petitioner distributed a leaflet in front of the A & D Market in Los Angeles, urging that it be temporarily boycotted because it allegedly sold goods of manufacturers whose employment policies reflected racial discrimination (R. 4, 17-20). The masthead of the leaflet identified its sponsor as "National Consumer Mobilization" and gave the post office address and phone number thereof (R. 17). At the non-jury trial, petitioner was found guilty of violating section 28.06 of Municipal Ordinance No. 77,000 and fined $10 (R. 23). His motion for a new trial

was denied (R. 15). On appeal to the Appellate Department of the Superior Court of California the judgment of conviction and the order denying the motion for a new trial were affirmed (R. 34).

The Ordinance Involved

The ordinance of the City of Los Angeles, California, under which the petitioner was convicted is Section 28.06 of Municipal Ordinance No. 77,000. which provides as follows:

> 28.06—Hand-Bill. Name and address of manufacturer-distributor: no person shall distribute any hand-bill in any place under any circumstances, which does not have printed on the cover, or the face thereof, the name and address of the following:
>
> (A) The person who printed, wrote, compiled or manufactured the same.
>
> (B) The person who caused the same to be distributed; provided, however, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers or agents of the person sponsoring said hand-bill shall also appear thereon.

The Issue

The issue to which this brief is addressed is whether a municipal ordinance making punishable the distribution of anonymous hand-bills anywhere in the city limits constitutes unlawful state action in that such legislation abridges freedom of speech and press as protected by the First and Fourteenth Amendments.

Summary of Argument

I. The ordinance challenged here places a restraint on the exercise of a right protected by the First Amendment, as made applicable to the states by the Fourteenth. Hence, it cannot stand in the absence of a showing of a compelling subordinating interest.

II. The restraint of freedom of expression imposed by the ordinance is substantial. Anonymity is an aid to free expression, particularly needed by those who express unpopular opinions. The right of political privacy, of which anonymity is one aspect, has received constitutional protection.

III. No compelling countervailing interest of the state has been advanced to justify this restraint. Exposure is not an appropriate aim of state action.

IV. The fact that the ordinance has an unjustified restrictive effect on those who may seek to express unpopular views renders it void on its face.

ARGUMENT

POINT I

The ordinance challenged here must be tested against the preferred position given to freedom of speech under the Constitution.

The ordinance here challenged plainly places a restraint on the exercise of a right protected by the First Amendment, as made applicable to the states by the Fourteenth. It is an express limitation on the distribution of handbills "in any place under any circumstances." Violation of the ordinance is punishable by fine or imprisonment.

Distribution of "hand-bills" or leaflets is a classic mode of exercising freedom of speech and this Court has given full protection to these "historic weapons in the defense of liberty * * *" *Lovell* v. *Griffin*, 303 U.S. 444, 452 (1938); *Schneider* v. *Irvington*, 308 U.S. 147 (1939); *Jamison* v. *Texas*, 318 U. S. 413 (1943). The restraint imposed by the ordinance is avoided if the person exercising his constitutional right by distributing a leaflet places his name and address on what he distributes. If he does not do so, he is entirely barred from using this method of airing his views. The question, therefore, is whether this restraint on a form of expression is consistent with constitutional requirements.

We are dealing here with limitations on the *manner* of expression, as distinguished from limitations on the *content* of what may be said. Where such limitations are designed to achieve a proper governmental purpose, such as the health, comfort or privacy of the public or their protection against fraud and other misconduct, the courts must de-

termine whether the restraint is so essential to achievement of a proper purpose that the curtailment of a constitutional right is justified. See, e.g., *Schneider* v. *Irvington, supra; Thornhill* v. *Alabama*, 310 U.S. 88 (1940); *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940); *Martin* v. *Struthers*, 319 U.S. 141 (1943); *Prince* v. *Massachusetts*, 321 U.S. 158 (1944); *Kovacs* v. *Cooper*, 336 U.S. 77 (1949); *Breard* v. *Alexandria*, 341 U.S. 622 (1951). The late Professor Chafee cogently warned that, "It must never be forgotten that the balancing cannot be properly done unless all the interests involved are adequately ascertained * * *" Chafee, *Free Speech in the United States*, p. 43 (1946). It is a conspicuous feature of this case, as we show below, that the California court made no effort to perform this essential function.

Where, as here, the right to freedom of expression is limited, the "usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." *Thomas* v. *Collins*, 323 U.S. 516, 530 (1945). The right asserted by petitioner here is among "those liberties of the individual which history has attested as the indispensable conditions of an open as against a closed society [and which therefore] come to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." Mr. Justice Frankfurter, concurring in *Kovacs* v. *Cooper, supra*, at 95. Freedom of the press lies "at the foundation of free government by free men. * * * In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public

convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." *Schneider* v. *Irvington, supra,* at 161.

As this Court has most recently said of the related First Amendment freedom of association, curtailments must be "subject to the closest scrutiny" and the "subordinating interest of the State must be compelling." *National Association for the Advancement of Colored People* v. *Alabama*, 357 U.S. 449, 461, 463 (1958). See also *Barenblatt* v. *United States*, 79 S. Ct. 1081, 1093 (1959).

The court below failed to apply this test. It assumed, without any evidence, that the City of Los Angeles had reasonable basis for adopting the challenged ordinance. Far from being "astute to examine the effect of the challenged legislation" (*Schneider* case, *supra*), it brushed aside, without any discussion, the claim that the ordinance substantially impaired freedom of speech. We submit that the judiciary, in performing its constitutional function, cannot treat limitations on democratic liberties so casually.

POINT II

The ordinance places a substantial restraint on freedom of expression.

Early in its opinion, the court below stated that the requirement that hand-bills carry the name of the distributor "does not serve in any way to restrict what may be said, except the purely speculative personal possibility that someone might hesitate to identify himself with his own statements therein contained" (R. 28). Thus, in a half-

sentence, the Court rejected the contention that freedom to speak and write without restraint on matters of public concern is or may be inhibited by a law that bars all anonymous expression in the form of leaflets. We submit that there is nothing "speculative" about this contention. It is amply supported by the history of political writing in this country.

A. The Place of Anonymity in a Democratic Society

To begin with, it should be recognized that there is nothing inherently wrong in desiring to keep one's name from the public. Anonymity may serve important social objectives. The cause of civilized progress was greatly benefited by the fact that Daniel Defoe could publish anonymously his *Shortest Way with the Dissenters*, and it was correspondingly greatly harmed when Defoe's identity was discovered and he was fined and pilloried for his offense (Minto, *Daniel Defoe* (1909), pp. 38-40).

In this country, even before the founding of our republic, the practice of speaking anonymously on social and political matters was accepted as normal and proper. Benjamin Franklin signed his first pieces for the *New England Courant* as "Silence Dogwood" (Bleyer, *Main Currents in the History of American Journalism* (1927), pp. 56-57). The use of names like "Philanthrop," "Humanus" and "Cato" as signatures on articles on public affairs was widespread (*Id.*, pp. 43-100). In 1775, Thomas Paine used the signature "Humanus" in an article for the *Pennsylvania Journal;* after Rev. William Smith, president of the University of Philadelphia, used the name "Cato" in attacking Paine's *Common Sense*, Paine replied under the name of "Forester" (*Id.*, p. 91). The *New Hampshire and*

Vermont Journal or Farmers Weekly Museum regularly published articles in the 1790's written by such persons as "The Lay Preacher," "Peter Pencil," "Simon Spunkey," "Peter Pendulum" and "The Pedlar" (*Id.*, p. 128).

The most famous of all American political writings, *The Federalist*, written by Alexander Hamilton, James Madison and John Jay, was published anonymously. Indeed, the attribution of several of the essays is still in doubt. As Professor Earle points out (*The Federalist*, Modern Library Edition (1937), Introduction, p. ix), during the controversy over the endorsement of the Constitution, "The press of the day was submerged with contributions from anonymous citizens." Among those anonymously opposing ratification was New York's Governor George Clinton, who wrote under the name of "Cato." (See the introduction by Paul Leicester Ford to the Henry Holt edition of *The Federalist* (1898), pp. xx-xxi.)

Thus, in the early days of our Republic, persons who were or were to become President of the United States, Chief Justice of the Supreme Court, Secretary of the Treasury and Governor of New York did not hesitate to maintain their anonymity in publishing weighty public and political documents.

This practice is still used by public officials. *Foreign Affairs*, the United States' most influential periodical dealing with international policy, has frequently in recent years masked the names of its contributors, carrying leading articles signed simply by single initials, including the famous "X" article, "The Sources of Soviet Conduct," which set forth the Government's policy towards the Soviet Union (Foreign Affairs, Vol. 25, Nos. 1 & 4, Vol. 27, No. 2, Vol. 36, No. 1).

The millions of Americans who are members of secret fraternal orders certainly believe firmly in their right to operate anonymously (Schlesinger, *Paths to the Present* 44 (1949)). Professor Schlesinger describes them as playing a "positive and continuing role in society" (*Id.*, p. 48).[1]

B. Anonymity as an Aid to Free Expression

In a number of ways modern society recognizes anonymity as a valuable aid in assuring free expression of opinion. It is standard practice for newspapers to print letters signed with initials or fictitious names. While the editors require that the writer disclose his name to them, they recognize that a freer expression of opinion can be achieved if they do not require public exposure of the writer's identity.

Public opinion researchers similarly accept the fact that some persons will hesitate to express themselves freely and honestly if they think that there is a chance that their names will ultimately be associated with the answers they give. In *Interviewing for NORC* (1945), the National Opinion Research Center, which has conducted surveys for many government agencies, advised its employees (p. 15):

> "A few persons may be reluctant to talk if they feel their names will be taken. You can explain that NORC *never* wants the name of anyone who doesn't want us to have it."

[1] A vigorous warning against the growing tendency to limit privacy and force all our activities into the glare of government supervision and public inspection is made by Professor Lasswell, "The Threat to Privacy," in MacIver, ed., *Conflict of Loyalties* (1952), pp. 121-140.

That the loss of anonymity can have a serious effect on free expression of opinion is recognized in the book, *How to Conduct Consumer and Opinion Research*, Blankenship, ed. (1946). The essay on "Measurement of Employees' Attitude and Morale," advises employers to place (pp. 223-4)

> "* * * emphasis on the point that the questionnaires must not be signed, that no one in the company will have access to the answered questionnaires, that there is no means of identifying a particular person's blank. All of the mechanics of distributing the questionnaire forms and the placing of the answered forms in the ballot box are such as to guarantee anonymity to the employee."

In the same book, the essay on "Trends in Public Opinion Research" describes conclusions drawn by the Office of Public Opinion Research from a comparison of questionnaires answered secretly with others answered by persons who were told that their identity would be known (p. 298):

> "Experiments with secret ballots as compared with oral interviews have shown that respondents are not always frank in stating their opinions. An unpopular opinion or one that reflects in any way upon the prestige of the respondent often gets a higher rating in the secret ballot than in oral replies."[2]

In employees' suggestion programs, likewise, it is common practice to set up a system in which the person making the suggestion does not identify himself but receives a numbered receipt from which he may be identified after the

[2] The original experiments are reported in detail in Cantril, *Gauging Public Opinion* (1944), Chap. V.

suggestion has been considered. In *How To Conduct A Successful Employees' Suggestion System* (p. 9), Ezra S. Taylor rates anonymity as the most important condition for successful suggestion systems.

Underlying all these practices, anonymous polls, letters to the editor and the like, is the well-founded belief that anonymity in the expression of views contributes to the free play of ideas and hence to the ultimate search for truth, the same search for truth that the founding fathers sought to foster by the guarantees of the First Amendment.

Conversely, it is apparent that a society in which citizens are not allowed to engage in political activity free of the watchful eye of the state would be intolerable. As George Orwell has shown in *Nineteen Eighty-Four*, such prying is consistent only with totalitarianism.

C. Secret Elections in Democracies

Anonymity, secrecy, privacy, however it may be called, thus has a special value in a democratic society. Nowhere is this seen better than in the act that symbolizes the unity of democratic government and its citizens, the election of public officers. It is not too much to say that that degree of freedom that prevails in a country's election is the surest test of the liberty of its citizens. As Mr. Justice Frankfurter pointed out, concurring in *Sweezy* v. *New Hampshire*, 354 U.S. 234, 266 (1957):

> "In the political realm, as in the academic, thought and action are presumptively immune from inquisition by political authority. It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major par-

> ties either in a state or national election. Until recently, no difference would have been entertained in regard to inquiries about a voter's affiliations with one of the various so-called third parties that have had their day, or longer, in our political history. This is so, even though adequate protection of secrecy by way of the Australian ballot did not come into use till 1888."

This right of "political privacy" (*id.* at 267) deserves protection whether exercised through major parties, through minor parties as in *Sweezy*, through organizations as in *NAACP* v. *Alabama*, 357 U.S. 449 (1958), or by an individual as in the present case.

D. Protection of Unpopular Opinion

The mantle of protection that the Constitution throws over the right to hold and espouse political, religious and other views is designed primarily for those who adhere to unpopular causes, those who advance the "opinions we loath." (Justice Holmes dissenting in *Abrams* v. *United States*, 250 U.S. 616, 630 (1919).) No bill of rights is needed to protect what is popular and conventional. Hence, when basic guarantees of the First Amendment are asserted, they must be interpreted in a manner that insures protection to the advocate of unpopular causes—the advocate who stands to be injured most by enforced disclosure of his identity.

This, we believe, is the principal thrust of this Court's recent decision in *NAACP* v. *Alabama*, *supra*. This Court was there concerned with the protection of those who hold "dissident beliefs" (357 U.S. at 462). Although the case involved exposure of organized activity, the reasoning ap-

plied equally to individual expression. Indeed, this Court expressly noted that, in asserting the right of anonymity, the Association "argues more appropriately the rights of its members" (*Id.* at 458).

The *NAACP* case established the importance of giving the full protection of the First Amendment guarantees to organized groups which may face hostility from the rest of the community. It is even more important, we believe, to protect the individual speaker against hostile measures. Petitioner here represents a class that is essential to the workings of democracy as envisaged in the Constitution. It is with the single, unsupported advocate, working without allies, that all movements begin. Just as "the longest journey starts with the first step," so the idea proclaimed by millions must first be voiced by a single individual. And it is while the idea is held only by one or a few persons that anonymity may make the difference between survival or immediate extinction. It is at this critical, formative stage that "forced revelations concerning matters that are unorthodox, unpopular, or even hateful to the general public * * * may be disastrous." *Watkins* v. *United States*, 354 U.S. 178, 197 (1957).

We submit, therefore, that the ordinance here challenged has an unquestionably inhibiting effect on freedom of expression, an effect which is by no means "speculative." Nor does it make any difference that this inhibiting effect will operate against only a small fraction of those who distribute hand-bills in Los Angeles. It is characteristic of restrictive laws in general and exposure laws in particular that they automatically seek out the unpopular group as their target. This was recognized by Circuit Judge Soper in *National Association for the Advancement of Colored*

People v. *Patty*, 159 F. Supp. 503 (D.C., E.D., Va., 1958), rev'd on other grounds *sub nom. Harrison* v. *NAACP*, 360 U.S. 167 (1959). The District Court there condemned a statute requiring submission of membership lists to the state. The requirement was directed, not to a specific organization as in *NAACP* v. *Alabama*, *supra*, but to a class of organizations which included the NAACP. Yet it was only the NAACP that resisted its application. Judge Soper said (159 F. Supp. at 526): "Registration of persons engaged in a popular cause imposes no hardship while, as the evidence in this case shows, registration of names of persons who resist the popular will would lead not only to expression of ill will and hostility but to the loss of members by plaintiff's Association."

The same selective effect is inherent in the ordinance involved here. Those who distribute leaflets containing innocuous or popular messages usually have no reason to conceal their names and will sign them even without legal compulsion. It is the advocate of dissident views who must often choose silence when the only alternative is exposure. The distributor of leaflets advertising a Democratic Party rally or a church supper need not fear that his name will be carefully noted and perhaps be made the subject of a savage editorial attack. He need not wonder whether he had prompted fanatics to burn crosses on his lawn or paint swastikas on his house.

The First Amendment rests on the assumption that the interests of the public as a whole require extending the guarantees of freedom of expression to the small fraction of the people who are moved from time to time to express new, usually unpopular views. The Bill of Rights is designed to shield the feeble spark of the untried idea from being quenched by a hostile flood of majority opinion.

POINT III

There is no compelling reason for legislative proscription of anonymity.

The Court below, which never considered the free speech interest to determine the harm done to it by the ordinance, gave but brief consideration to the other side of the coin. In support of the ordinance, it offered only the unadorned and unsupported statement that "the requirement is reasonably germane to the exercise of the police power since it provides a means of determining and securing responsibility for what is said" (R. 28-29).

Even an exercise of the police power, however, may go no further than plainly necessary to achieve its purpose when its effect is to curb First Amendment rights. The possibility that some leaflet or hand-bill may contain libelous matter does not automatically justify impairing freedom of speech by a sweeping prohibition of all anonymous hand-bills, at all times and places. Legislation limiting expression must at least be "narrowly drawn to cover the precise situation giving rise to the danger." *Thornhill v. Alabama*, 310 U. S. 88, 105 (1940).

There was plainly no need to prohibit distribution of the leaflet involved here in order to insure accountability for libel. The leaflet carried the name of an organization, a genuine address and a genuine telephone number. Any person libelled could have identified the distributor with little difficulty.

Moreover, even if it were true that allowing anonymous expression might sometimes make it more difficult for

defamed persons to obtain full justice, that would not be a conclusive factor, by itself, in favor of the ordinance. There are a number of respects in which the law places curbs on the full vindication of legal rights in order to protect other important public interests. Among these are the exclusion of relevant evidence in order to preserve valuable confidential relationships.[3] In the field of defamation, this Court has only recently reaffirmed the absolute privilege given to government officials in order to prevent restraint of their necessary activities.[4]

Beyond the one consideration of responsibility for libel mentioned by the court below, one can only speculate as to possible justifications for the ordinance. (None are offered in the Brief in Opposition to the Petition for Certiorari.) No such speculation should be demanded, however, where the burden is upon the state to show "compelling" reasons for its restrictive action (*supra*, Point I). Nevertheless, a few points may be mentioned.

First, it cannot be argued that denial of anonymity is a proper end in itself. In *Watkins* v. *United States*, *supra*, this Court said (354 U. S. at 187): "There is no general

[3] Wigmore, *Evidence*, Vol. 8, Chapters 81-87 (3d ed., 1940). Wigmore makes it plain that these exclusionary rules are direct impairments of the societal objective of justice based on the closest possible ascertainment of truth and that they are accepted only to attain other competing objectives (*Id.*, at pp. 64-67). One of these exclusionary rules, which bars questions to witnesses about their religious opinions, is designed at least in part to protect a First Amendment right (*Id.* at 162).

[4] *Barr* v. *Matteo*, 79 S. Ct. 1335 (1959); *Howard* v. *Lyons*, 79 S. Ct. 1331 (1959). It was held in *Barr* that "protection of the individual citizen against pecuniary damage caused by oppressive or malicious action on the part of officials of the Federal Government" must yield to "the protection of the public interest by shielding responsible governmental officers against the harassment and inevitable hazards of vindictive or ill-founded damage suits" (79 S. Ct. at 1336).

authority to expose the private affairs of individuals without justification in terms of the functions of Congress." This concept was reiterated in *Barenblatt* v. *United States*, *supra*, where this Court said (79 S. Ct. at 1093): "* * * Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a [valid legislative] purpose."[5] We submit that it is equally true that state and local governments have no power to compel exposure without justification in terms of their own functions. Exposure does not justify itself, particularly where its effect restrains freedom of expression.

Second, we concur in petitioner's argument that it is not an appropriate use of governmental powers to prohibit anonymity in order to enable readers to judge the motives and good faith of the writer. The anonymous writer pays a price for whatever advantage he gains by concealing his name. Most if not all his readers will count his secrecy against him in weighing what they read. On the other hand, it can be argued that anonymity contributes to rational appraisal of arguments since it reduces the element of personal bias. These and other competing factors are part of the free competition of ideas which the state may not constitutionally disturb by tilting the scales.

Finally, the state has not even borne the burden here of showing that anonymous leaflets are a significant factor

[5] In going on to reject the contention that the Congressional action there challenged was improper because its "true objective * * * was purely 'exposure,'" (79 S. Ct. at 1096), this Court held merely that it would not probe into hidden Congressional motives where a proper purpose for the Congressional action appeared. It thereby impliedly but necessarily assumed the principle that exposure cannot be offered by Congress as a justification in itself for legislative actions.

in Los Angeles, that they occur with any frequency or have caused any known difficulties. If anything in this case is "speculative," it is the conclusion that this ordinance is needed to deal with existing evils.

On the contrary, it seems likely that it is only rarely that leaflet distributors conceal their identity. However, the few cases where anonymity is exercised, as we have shown in Point II, are the very ones where the protections of the First Amendment are most needed.

POINT IV

The ordinance here challenged is void on its face.

In condemning an attempt to expose an organization's membership lists in *National Association for the Advancemen of Colored People* v. *Alabama*, 357 U. S. 449 (1957) this Court noted that there was evidence that, in the circumstances prevailing in Alabama, exposure would place adherents of the Association under severe pressure.[6] Although a parallel showing has been made by petitioner here, we do not rest the argument in this brief on that factor.

The Los Angeles ordinance, which applies to all expression in the form of leaflets, places a restraint on all such expression. While the restraint is negligible for most leaflet distributors, it is substantial for those who advocate unpopular causes, as we have shown in Point II. We

[6] It does not appear that this Court rested its decision on that evidence. Rather, the case stands for the principle that "* * * compelled disclosure of affiliation with groups engaged in advocacy may constitute * * * a restraint on freedom of association * * *." (357 U. S. at 462.)

believe that that is enough to condemn the ordinance on its face, and not merely as applied in this situation.

This is not a novel proposition. For example, laws that give too wide a power to a public official to grant or withhold licenses to speak or to publish exert their restrictive effect chiefly on groups that are in official disfavor. Yet this Court has condemned them *in toto* (*Kunz* v. *New York*, 340 U. S. 290 (1951)), going so far as to hold that they may be challenged without a showing that a license has been sought and denied. *Lovell* v. *Griffin*, 303 U. S. 444, 452-453 (1938). Similarly laws that lay taxes on religious advocacy restrain only the small groups that find them financially burdensome. Yet this Court has not limited its protection in such cases to those who cannot pay what is demanded. *Murdock* v. *Pennsylvania*, 319 U. S. 105 (1943).[7]

The Los Angeles ordinance here lays a restraint on a form of expression—leaflet distribution—which has a substantial restrictive effect when applied to unpopular groups. It is therefore unconstitutional on its face.

Conclusion

The ordinance here challenged places a restraint on the exercise of the right to freedom of expression, guaranteed against governmental interference by the First and Fourteenth Amendments to the United States Constitution. The restraint imposed is substantial. It weighs most

[7] In the *Murdock* case, a distinction was carefully drawn between the imposition of general taxes on religious groups and a tax which is a condition on the exercise of religious rights. If the latter were permitted, the Court said, the taxing authority could "close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy" (319 U. S. at 112).

heavily against the advocates of unpopular causes. The state has failed to show a "compelling" reason for its imposition.

We therefore urge this Court to reverse the decision below on the ground that the ordinance under which petitioner was convicted is unconstitutional on its face.

Respectfully submitted,

SHAD POLIER
WILL MASLOW
LEO PFEFFER
Attorneys for
American Jewish Congress

JOSEPH B. ROBISON
Of Counsel

October, 1959